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2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
-----X

4 STEVEN COOPER,

5 Plaintiff,

6 -against-

Case No.:
17-cv-01517

7 CITY OF NEW YORK, et al,

8 Defendants.

9 -----X

November 4, 2019
3:07 p.m.

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14 Videoconference deposition of SEAN
15 HUGHES, taken by the Plaintiff, pursuant to
16 a Court Order and to the Federal Rules of
17 Civil Procedure, reported remotely by Rose
18 Marie Iacobellis, a Shorthand Reporter and
19 Notary Public of the State of New York.
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BY: JOHN CARROLL, ADA

PRESENT:

YITZCHOK KOTKES

STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED, by
and between counsel for the respective
parties hereto, that all objections, except
as to form, are reserved to the time of
trial.

IT IS FURTHER STIPULATED AND AGREED
that the deposition may be signed and sworn
to before any officer authorized to
administer an oath.

IT IS FURTHER STIPULATED AND AGREED
that the sealing and filing of the
deposition be waived.

Hughes

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SEAN HUGHES,

called as a witness, having been first
duly sworn by a Notary Public of the
State of New York, was examined and
testified as follows:

EXAMINATION

BY MR. RICKNER:

Q. Please state your name for the
record.

A. Sean Hughes.

Q. What is your address?

A. 350 Jay Street, Brooklyn, New
York.

Q. ADA Hughes, my name is Rob
Rickner, I represent the Plaintiff, Steven
Cooper, in this action, and I'd just like
to you ask you a couple of questions.

Mr. Hughes, have you ever had
your deposition taken before?

A. No.

Q. Have you ever testified at trial?

A. No.

Q. Have you ever taken a deposition
given that you are an attorney?

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A. No.

Q. Okay.

I'm sure your attorney went over this, but these are just a couple of ground rules to help us get a nice clear transcript.

The first, and you're doing a great job of it, is please wait until my rambling question finishes, even if you're absolutely sure where I'm going, before you jump in and answer, so there's a nice clear break between what I say and you say, and so that your attorney has a chance to object.

Do you understand?

A. Yes.

Q. Can you do that for me?

A. Yes.

Q. And even though we're testifying here over Zoom, in our office, these are -- the same rules apply as if you're testifying in a court of law, meaning that you have to tell the truth, the whole truth and nothing but the truth. Do you

Hughes

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understand?

A. I do.

Q. Will you do that for me?

A. Yes.

Q. And, finally, the last thing is that even though we are on Zoom, and you can see my hands and we can all make gestures and nod our heads, the court reporter cannot necessarily take that down. So we need nice, clear verbal answers. Do you understand?

A. I do.

Q. You're currently employed with the Kings County District Attorney's Office?

A. Yes.

Q. When did you start there?

A. I started in the fall of 2015.

Q. And did you start there right out of law school?

A. Yes.

Q. Now, I'd like you to pull up the complaint room screening sheet that I've, hopefully, has already been provided to

1 Hughes 8

2 you. It bears the Bates number, D_00119 to
3 120.

4 A. Yes, I'm looking at it.

5 Q. Okay.

6 Can you --

7 MR. RICKNER: And I'd like the
8 court reporter to please mark this as
9 Exhibit 27. We're using sequential
10 exhibits.

11 (Whereupon, the aforementioned
12 complaint room screening sheet, Bates
13 number, D_00119 to 120, was marked as
14 Exhibit 27 for identification as of
15 this date by the Reporter.)

16 Q. Can you please identify Exhibit
17 27 for the record, Mr. Hughes.

18 A. This is a complaint room
19 screening sheet. The defendant's name in
20 this case was Steven Cooper, and the
21 screener is listed as myself, Sean Hughes.

22 Q. Now, what is the complaint room?

23 A. The complaint room is -- it's
24 part of the early case assessment bureau.
25 We -- when you're assigned there, you

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intake cases from the police and draft the first, you know, accusatory instrument.

Q. And what is the early case assessment bureau?

A. Principally, we screen the case, we call the -- we're usually the first people to call the witness, we write up some preliminary paperwork, we write a criminal court complaint. We also staff the criminal court arraignments.

Q. So please explain to me the intake procedure in March or April of 2016 for a case with a DAT?

A. So, there's a -- I wouldn't call her specifically a chief, but there's a woman who is in charge of the desk appearance tickets, and they kind of just sit in a stack.

DATs aren't the same priority as a live arrest case. So because the person is not in custody, so you kind of take the DAT, like you pick it up to write it up when there's not as many cases on the desk to write it live.

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In a case -- a certain DAT is assault DATs, those were assigned to an ADA to work on not just on one shift, but if it needed to be, across a few shifts.

Q. So the woman in charge, what's her name?

A. Her name is Sofia, S-O-F-I-A, Aitken, A-I-T-K-E-N.

Q. And would it be correct to say that she has a collection of desk appearance tickets that need to be processed that she then distributes?

A. I mean, I -- when you say distribute, like she doesn't assign anything, she is not an ADA, she's kind of like a paralegal. But I feel like she does process them, I suppose, in the sense that she, I don't know, maybe collects paperwork, I couldn't specifically say what she does. But I know she's like the point person of DATs.

Q. Right. So let me put it another way.

How do you get assigned to a

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specific DAT?

A. On a non-assault DAT, there's like a box and you walk over and you pick it up.

Q. So the next one up is yours?

A. Well, the DATs, actually, you can kind of just go through the box, because sometimes, you know, if you're looking for something that might be a little easier as a DAT to write up versus something that might be a little more -- take a little more time.

Q. Okay.

So looking at the complaint room screening sheet that was marked as Exhibit 27, is this an assault DAT?

A. This was an assault DAT.

Q. How are assault DATs assigned?

A. I don't recall the specific procedure, but I know that we were given -- like an assault DAT was assigned to me as it was assigned to my colleagues, and I would be, you know, charged with writing it up and packaging it up and submitting it

1 Hughes 12

2 off to eventually be arraigned.

3 Q. Do you know how you got assigned

4 to Mr. Cooper's case?

5 A. I don't recall.

6 MR. CARROLL: Mr. Rickner, can I

7 just jump in here? I'm having a hard

8 time pulling up the documents that you

9 sent over. Is there -- could you send

10 them to my personal e-mail address?

11 MR. RICKNER: Yeah, absolutely.

12 What is it? Oh, you e-mailed it to me

13 earlier, didn't you?

14 MR. CARROLL: Yes, I did.

15 MR. RICKNER: All right. So I'm

16 going to just see if I can figure this

17 out really quickly.

18 Off the record.

19 (Whereupon, an off-the-record

20 discussion was held.)

21 Q. When an assault --

22 MR. RICKNER: Withdrawn.

23 Q. DAT stands for desk appearance

24 ticket?

25 A. Yes.

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Hughes 13

Q. And a desk appearance ticket is something that's provided to a criminal defendant or a potential criminal defendant, rather than processing them through Central Booking?

A. Yes.

Q. When you were assigned an assault DAT, how does the information you need to process come to you?

MR. CARROLL: Objection to the form.

Q. And to be specific, how does it come to you in March 20th or April 20th of 2016?

MR. CARROLL: Objection to the form. I just don't know what you mean by "come to you."

MR. RICKNER: Okay. Let me rephrase.

Q. Is it correct to say that in order to process a DAT, you need materials, right?

A. Yes.

Q. And those materials, at least

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initially, are provided by the NYPD to the Kings County District Attorney's Office?

A. Yes.

Q. And is there a name for the package of materials that comes from the New York City Police Department to the Kings County District Attorney's Office?

A. I've always just called it the arrest packet, but I know it goes through -- it's called LAPS, L-A-P-S.

Q. Do you know what LAPS stands for?

A. I think it's local arrest processing something.

Q. Fair enough.

A. I think arrest processing is definitely part of it.

Q. What does LAPS do?

A. Well, the LAPS is staffed by the NYPD. They get the paperwork from the arresting officer, and then give the case a ready time. Then that's brought over to the ECAB expediter.

Q. And who is the ECAB expediter?

A. As their role or specifically the

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person?

Q. As their role.

A. An ECAB expediter assigns live cases.

Q. But for a desk appearance ticket, which I gathered is not considered a live case; is that right?

A. That's correct.

Q. When a potential criminal defendant gets a desk appearance ticket, how do the materials get from LAPS to the district attorney who ultimately processes it?

A. I mean, someone puts them into a yellow envelope, and they end up in the DAT box, and then one of us picks it up.

Q. Okay.

So for an arrest --

MR. RICKNER: Withdrawn.

Q. For an arrest DAT, like the one depicted on Exhibit 27, you get a yellow envelope?

A. Yeah, it's a DAT packet.

Q. Okay.

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Can you pull up this,
unfortunately, very fuzzy-looking exhibit,
Bates Stamped D_00116?

A. I'm looking at that.

MR. RICKNER: Can we please mark
this as Exhibit 28.

(Whereupon, the aforementioned
document Bates Stamped D_00116 was
marked as Exhibit 28 for identification
as of this date by the Reporter.)

Q. Can you identify Exhibit 28 for
the record.

A. That is a copy of a piece of
paper titled "DAT Arrest Package" with the
Defendant's name as Steven Cooper.

Q. Now, when you were talking about
the yellow envelope that has the arrest
packet, does Exhibit 28 show up on the
front of that envelope?

A. It's usually -- on DAT cases,
something like this would be stapled to the
front of the manilla envelope.

Q. And inside of that envelope, what
materials would be included for an arrest

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DAT?

MR. CARROLL: Objection to the
form.

MR. RICKNER: Withdrawn. You're
right.

Q. What would be inside the DAT
package yellow envelope in an assault DAT
case?

A. Honestly, it depends on the
arresting officer. Generally speaking,
based on my experience, you would get an
OmniForm arrest report, an OmniForm
complaint report, maybe a complainant's
contact sheet.

Sometimes you can get vouchers
related to weapons or personal property,
narcotics. Sometimes you can get a VSA
super form, maybe a memo book, a copy of a
memo book. But, again, it depends on your
arresting officer.

Q. What is a BSA super form?

A. V -- as in Victor -- SA super
form.

Q. Okay.

1 Hughes 18

2 A. Honestly, it says the defendant's
3 name and has the officer's name on it, too,
4 with their tax ID number. And I have never
5 figured out what purpose it serves.

6 Q. Understood.

7 Would you get mugshots sometimes
8 as part of the DAT package?

9 A. What do you mean when you say a
10 "mugshot"?

11 Q. A mugshot of the defendant.

12 MR. CARROLL: Objection to the
13 form.

14 MR. RICKNER: Would you like me
15 to start over or is there a specific
16 issue --

17 MR. CARROLL: What do you mean by
18 "mugshot"? It could mean different
19 things.

20 Q. ADA Hughes, when somebody is
21 arrested by the NYPD, is the protocol to
22 take a photograph of the person who was
23 arrested?

24 A. It is.

25 Q. Is that photograph often referred

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to as a "mugshot"?

MR. CARROLL: Objection to the
form.

Q. Is that -- what would you call
the photo that was taken by the NYPD?

A. It kind of depends on who we're
talking about, because a mugshot, as I
know, it gets taken at bookings, at the
courthouse, and then it gets uploaded to
e-Justice, and we have to review, request
it, but that's usually after you get the
case.

But then sometimes your arresting
officer, as part of arrest protocol, may
take a full-body shot, frontal profile view
on their department phones when someone's
back in the pens at the precinct, and then
you also collect that as part of discovery.
That usually you don't get at the DAT
stage, though.

Q. You mean that you would get that
once the case is already underway after
arraignment?

A. Yeah, that's usually -- it's --

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it's usually not in the DAT packet pre-arraignment. That's something the assigned usually has to collect.

Q. After you get an assault DAT packet, would you collect additional documents as part of processing the DAT?

A. I think it would depend. I don't think I ever did. I mean, because at that point, you're -- you really just need enough information to draft a sufficient accusatory instrument.

Q. So going back to Exhibit 27.

A. That was the screen sheet, correct.

Q. Yeah, the screen sheet.

A. Okay.

Q. It says the screener is Sean Hughes. That's you, right?

A. Yes.

Q. Were you the only DAT --

MR. RICKNER: Withdrawn.

Q. Were you the only ADA that processed Mr. Cooper's DAT?

MR. CARROLL: Objection to the

1 Hughes 21

2 form.

3 You can answer.

4 I just don't know what you mean

5 by "process."

6 MR. RICKNER: He's been using the

7 word process.

8 Q. All right. Let's go back.

9 ADA Hughes, is there a name for

10 the process by which a DAT package

11 ultimately becomes a signed criminal

12 complaint that's submitted?

13 A. It's called screening.

14 Q. Okay.

15 Did any other ADA besides

16 yourself work on screening Mr. Cooper's

17 DAT?

18 A. Do you mean at my level or

19 whether I consulted anybody?

20 Q. Both.

21 A. I was solely responsible for

22 screening this case, but before I'm allowed

23 to submit it, it had to be signed off on by

24 a supervisor.

25 Q. At the time, who was your

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supervisor?

A. It would depend on the day of the week. My shift -- we had eight supervisors in ECAB, I think, at that time.

Q. When a complaint room --

MR. RICKNER: Withdrawn.

Q. When you're done screening a DAT, how would you go about having it approved by your supervisor?

A. You take the screening sheet and the complaint unsigned to the boss, and you sit down and you say this is a case, they read it.

If they have any questions, they might ask you a few questions. They might ask you to find out some more information. But if it's okay, then they initial it, and then you're allowed to submit it.

Q. Now, it says here the screening date was April 20th, 2016; is that right?

A. That is what the document says.

Q. Is that the date that you finished screening Mr. Cooper's DAT?

A. I don't know.

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Hughes 23

Q. Would it be correct that for an assault DAT, you may end up working on it over multiple days?

A. Yes.

Q. Now, I'd like you to pull up the complaint room tracking sheet?

A. I'm looking at it.

MR. RICKNER: I'd just like to mark this as Exhibit 29.

(Whereupon, the aforementioned complaint room tracking sheet was marked as Exhibit 29 for identification as of this date by the Reporter.)

Q. Can you please identify Exhibit 29 for the record.

A. At the top, it says, "Crimes against persons DAT complaint room tracking sheet." It bears the name next to defendant, "Cooper, Steven." Further down, it says, "Assigned ADA/Para Hughes and CW Thomas Jacobs."

Q. And what is the purpose of Exhibit 29?

A. It's kind of like an action

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Hughes 24

sheet, so that you can write down what you did.

Q. Now, I'd just like to go to the first line underneath the section, "Attempts to contact CW," do you see that?

A. Okay.

I see it.

Q. Now, "CW" means complaining witness; is that right?

A. Yes.

Q. What is a complaining witness?

A. A complaining witness is a person who alleges that a crime was committed against them.

Q. Now, can you please read the first entry underneath "attempts to contact CW"?

A. Under date, it says 4/16 -- I'm sorry, 4/6/16, time 16:00, ADA Hughes, tel number, looks like I just wrote 1, and then results, made contact with CW-to call CW back, to call AO.

Q. And can you please explain what that section in the result column means.

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A. Based on reading it, I made a notation that I successfully contacted the complainant, but for whatever reason, I'd have to call back and I made a note to myself to all the arresting officers.

Q. And based on this sheet, is the arresting officer Shrell?

A. That is the arresting officer name at the top of the sheet, but I don't have an independent recollection of who the arresting officer was?

Q. Is there typically more than one arresting officer for a case?

A. To not get like hyper technical on you. Sometimes.

Q. For an assault DAT, would it be correct to say that there's only one arresting officer?

A. Not in every case, because -- so sometimes like if you have an officer who's high on overtime, the sergeant might assign -- even though they made an arrest, the sergeant might assign the case to another officer for them to write up,

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almost along the lines of like overtime measures or staffing measures. So, it's not necessarily that one person is the arresting officer.

Q. Would it be correct to say that if the arresting officer has time, the person that actually made the arrest would be the arresting officer on the paperwork?

A. That would be fair.

Q. Now, can you go down to 4/14/16 and please read that entry.

A. "Date 4/14/16, time 21:40, ADA Hughes, Tel No. 1, completed interview with CW. CW to e-mail contact info of CW's friends."

Q. And here, the CW is Thomas Jacobs?

A. Yes.

Q. And he was going to e-mail you contact information for his friends?

A. Yes.

Q. And the implication being that his friends were witnesses to the incident?

A. Yes.

1 Hughes 27

2 Q. Do you know if you ever received

3 that e-mail?

4 A. I don't recall.

5 Q. If you did receive that e-mail,

6 would it simply go to your work inbox?

7 MR. CARROLL: Objection to the

8 form.

9 MR. RICKNER: Withdrawn.

10 Q. ADA Hughes, do you have an e-mail

11 address that you use for your work as an

12 ADA?

13 A. I do.

14 Q. If Thomas Jacobs was going to

15 e-mail you contact information, would it go

16 to that e-mail address?

17 A. Yes.

18 Q. Do you preserve those e-mails,

19 meaning saved them for a period of time?

20 MR. CARROLL: Objection to the

21 form.

22 Q. You can answer.

23 A. When I was in ECAB, I don't think

24 I saved e-mails. It might just sit in my

25 inbox for a time until the Outlook

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automatically does something with it.

Q. Now, I'd like to pull up --

MR. RICKNER: I would like to mark this as Exhibit 30, and this is the witness contact information sheet, Bates Stamp D_00126.

(Whereupon, the aforementioned witness contact information sheet, Bates Stamp D_00126 was marked as Exhibit 30 for identification as of this date by the Reporter.)

Q. Can you please pull that up. It bears Bates Stamp D_00126 --

MR. CARROLL: Can we go off the record for one second.

MR. RICKNER: Sure.

(Whereupon, an off-the-record discussion was held.

MR. CARROLL: Back on the record. I was just pointing out that the question was whether ADA Hughes saved his own e-mails, and that's up to each ADA whether they save -- how they save their own e-mails. I just wanted it

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Hughes 29

clear that the IT department does have a mechanism -- I don't know how far back it goes, but I know that they are able to retrieve e-mails, you know, that I ask for.

I have asked them to retrieve e-mails at times, and they haven't been able to find and retrieve them. So although how ADA Hughes saves them is his, you know -- some people save them, some people don't, there is a mechanism by which they are saved for a certain amount of time just by our information technology department.

MR. RICKNER: Understood. Thank you for the clarification.

(Whereupon, an off-the-record discussion was held.)

Q. So going back to Exhibit 30, can you identify this for the record, please.

A. At the top, it says, "Complaint room witness contact information sheet." There's a caption, "The People of the State of New York against Cooper, Steven." Then

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Hughes 30

there's an arrest number, K16621359.

Q. Now, is this a document that you would prepare?

A. It's generated as part of the ECAB screening program.

As I input contact information for witnesses into the program, if you click -- I don't remember what it's labelled as, but this is the sheet that gets printed.

Q. Right.

So, if you can just look at Exhibit 27, would I be correct in saying that you entered information into a database, and then the complaint room screening sheet is a form that's then printed out based on the information that you've entered?

A. I'm sorry. Can you say that to me one more time?

Q. You identified there's a computer program that you use as part of the ECAB process?

A. Yes.

1 Hughes 31

2 Q. And what's the name of that
3 computer program?

4 A. Actually, I think it's just
5 called screening.

6 Q. When you enter information into
7 the screening program, does it then print
8 out the complaint room screening sheet?

9 A. Yes.

10 Q. So, you don't go through and fill
11 out a form that looks like Exhibit 27,
12 right?

13 A. Yes.

14 Q. Instead, you entered different
15 information --

16 MR. RICKNER: Withdrawn.

17 Q. Instead, you enter information
18 into the system, and then the form is
19 generated?

20 A. Yes.

21 Q. Okay.

22 Now, looking at Exhibit 27 and
23 Exhibit 30 together, is there any
24 additional information that's contained in
25 the ECAB screening program that is not

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Hughes 32

reflected on these two documents taken together?

MR. CARROLL: Objection to the form.

Q. You can answer.

A. I mean, through the screening program, we draft the complaint, but I couldn't tell you if the way -- the way the complaint, like it pops up in a separate dialogue box, so I don't know if it's actually part of the same program.

Q. Okay.

Let's take it this way. Let's say you recorded information regarding an interview in the ECAB screening program, would that information be provided verbatim on a screening sheet like Exhibit 27?

MR. CARROLL: Objection to the form.

THE WITNESS: It depends.

Q. In certain instances, would you write down statements by a witness inside of the ECAB screening form, but it would be printed out somewhere else?

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Hughes 33

A. What do you mean "printed out somewhere else"?

Q. Let's be more specific. So is it fair to say that on Exhibit 27, underneath the double line that says "complaint charges," there's a summary of the allegations?

A. Yes.

Q. And this summary is based on the documents you received in the DAT package, along with your interviews?

A. Yes.

Q. Inside of the ECAB screening program, would there be additional information about underlying facts of the case that is not included on Exhibit 27?

A. Like I said, the complaint generates separately.

Q. Okay.

A. But it might be part of the same program, it might not, but everything else usually pops up on the ECAB sheet.

Q. I think you see where I'm going with that. What I'm wondering is, that is,

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is there a separate set of interview notes that you would have had with Thomas Jacobs that isn't reflected on Exhibit 27?

A. No.

Q. Now, going back to Exhibit 30, can you tell based on Exhibit 30 itself whether or not you spoke to each of these witnesses?

A. No.

MR. CARROLL: Objection to the form.

Q. Okay.

Now, if you go down and there's an assigned detective, do you see that?

A. I do.

Q. It says Ryan Lane?

A. I see that.

Q. Can you tell me his role in this case?

A. I don't recall his role in the case.

Q. Do you know Ryan Lane just generally from your work as a district attorney?

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A. No.

Q. Do you have any idea why Ryan Lane was assigned as a detective to this case?

MR. CARROLL: Objection to the form.

THE WITNESS: I don't.

Q. Would it be correct to say that there are no narcotics allegations reflected in the complaint?

And if you'd like to look at the complaint, I think I provided it to you, and it was previously marked as Exhibit 23?

A. There's no narcotics allegations.

Q. Do you know why somebody from narcotics from Brooklyn South would have been assigned to the case, then?

MR. CARROLL: Objection to the form.

MR. RICKNER: I wouldn't know.

Q. Okay.

Did you ever speak to him?

MR. CARROLL: Objection to the form.

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Hughes 36

Q. Did you ever speak to Detective Ryan Lane regarding the charges against Steven Cooper?

A. I don't recall.

Q. Now, underneath, there's a section that says "other officials"?

A. I see that.

Q. Can you read, I guess, the two letters or two sets of letters after the colon, Lieutenant MG, maybe?

A. It could -- it could be Lieutenant MG -- I mean, presuming there's a phone number after it, that would make sense. I first thought it looked like CT, but then I didn't know what the letters would mean.

Q. Sitting here today, do you know what this other official was doing with respect to this case?

A. I don't recall.

Q. Now, going back to the complaint room screening sheet.

A. Okay.

Q. There's a section that says

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"reporters." Do you see that?

A. Yes.

Q. What is a reporter in this context?

A. A reporter could be the person who called 9-1-1 or somehow reported the crime, whether it's to the police or maybe it's the DA's action hotline or however the crime got, you know, reported.

Q. Is it fair to say that there's typically a name associated with the reporter?

A. Yeah.

Q. Do you know why there isn't a name included here?

A. Honestly, no. Sometimes the ECAB program can be a little wonky, and it -- down the line, the assigned can always request a 9-1-1 call and figure out who it is. So it's not like a big deal.

Q. Now, going down further, there's a list of three witnesses.

A. Yes.

Q. And do you know if you spoke to

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each of these witnesses?

MR. RICKNER: Withdrawn.

Q. Let's break them out.

Did you speak to Vasilis Xydias?

V-A-S-I-L-I-S. X-Y-D-I-A-S.

A. If you look further down on the screen sheet, it says "interviewed telephone," indicating that I would have spoken to this witness, but I don't have a recollection of the conversation.

Q. And going down further, there's a witness Steve Mona. Do you see that?

A. Yes.

Q. And is it correct to say that you did not speak to Mr. Mona?

A. Based on this sheet, yeah, it says "no interview," and then my reason said "unavailable."

Q. And then going one further down, there's Thomas Jacobs?

A. Yes.

Q. And you did have an interview with him; is that correct?

A. Yes, it says "interview

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telephone."

Q. Do you know when that interview took place based on the documentation I put in front of you?

MR. CARROLL: Objection to form.

MR. RICKNER: Withdrawn.

Q. Do you know when you interviewed Thomas Jacobs with respect to the charges against Steven Cooper?

A. Based on the complaint room tracking sheet, I spoke to the complainant, Mr. Jacobs, on April 6th and April 14th of 2016.

Q. If you had spoken to him additional times, would that be reflected somewhere in these documents?

A. I would have probably written it down under the attempts to contact CW on the tracking sheet.

Q. Now, there's a section here and it says, "DAT: Def punched CW and broke CW's glasses"?

A. Yes.

Q. Does this reflect the statements

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that were made during the interview?

A. That specific line?

Q. No, no, no. The information that comes afterwards, but before the line where it says "reporters."

A. That section is a summary of the interviews, paperwork. It's a way for me to write out what I found to be the facts of the case.

Q. Based on what's written here, can you tell which witness gave you which piece of information?

A. No.

Q. Is the complaint room screening sheet kept in the ordinary course of the Kings County District Attorney's Office's business?

A. Yes.

Q. And did you make this complaint room screening sheet in the routine course of the Kings County District Attorney's business?

A. Yes.

Q. And did you make this record at

1 Hughes 41
2 or near the time of the transactions that
3 are detailed within it?
4 A. Not too far after, I suppose.
5 Q. Within a couple of days?
6 A. Well, you're -- the incident here
7 was March 20th, and by April 20th would be
8 the last date listed on the screening
9 program. So within a month.
10 Q. How differently -- did you record
11 the information contained in the complaint
12 room screening sheet near the time that you
13 received the information from Thomas Jacobs
14 and the other witness?
15 A. Yes.
16 Q. And did you create --
17 MR. RICKNER: Withdrawn.
18 Q. Now, I'd like to go back a little
19 bit -- go back to this paragraph, and I
20 think it's the second sentence from the
21 bottom. It says "injuries" and there's a
22 colon.
23 A. Okay.
24 Q. And it goes, "CW suffered redness
25 and bruising (photos)."

1 Hughes 42

2 Do you see that?

3 A. I do.

4 Q. Would you have had copies of the

5 photos when you screened Mr. Cooper's DAT?

6 A. Probably not.

7 Q. That would indicate that somebody

8 told you that there were photos available?

9 A. That's likely.

10 Q. All right.

11 Going down to --

12 MR. RICKNER: Withdrawn.

13 Q. Going to Exhibit 23, can you

14 identify the first page of Exhibit 23 for

15 the record?

16 A. I'm sorry. Which exhibit is 23?

17 Q. Oh, sorry. It's the complaint.

18 The complaint, because on the back, I have

19 the supporting deposition from Jacobs. I

20 understand those are two different

21 documents, I'll just refer to them as first

22 page, second page.

23 A. Sure.

24 So, the first page says,

25 "Criminal Court of the City of New York

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part APAR County of Kings," there's a caption, "The People of the State of New York versus Steven Cooper." On the right-hand side, it says, "State of New York County of Kings." The second page at the top --

Q. Just the first page. I'm sorry to cut you off. Is it fair to say that the first page of Exhibit 23 is a charging instrument?

A. Yes.

Q. And this is the document by which the criminal case against Mr. Cooper starts?

A. Yes.

Q. Now, did you sign the first page of Exhibit 23?

A. Yes.

Q. But is it correct to say that you did not have first-hand knowledge of the underlying facts of the crime?

A. That's correct.

Q. You had to receive the information from your witness interviews,

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right?

A. Yes.

Q. And based on the information you received, you determined which charges could be brought?

A. Yes.

Q. And you also included what the witnesses had said in this complaint itself, right?

A. Yes.

Q. So I'd like to go to the -- really, the third sentence from the bottom, but it's also the third paragraph from the bottom, and it says, "Deponent is informed by Thomas Jacobs' death."

A. I'm looking at it.

Q. And it says that at the above time and place, "Defendant struck informant about the face with a closed fist." Do you see that?

A. I do.

Q. Is the informant in this sentence Thomas Jacobs?

A. Yes.

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Hughes 45

Q. And that means that Thomas Jacobs told you that Defendant, Steven Cooper, struck him in the face with a closed fist, right?

A. Yes, based on the complaint.

Q. And moving to the second paragraph, it says that --

MR. RICKNER: Withdrawn.

Q. In the second paragraph from the bottom, the informant, Thomas Jacobs, said that being struck by Mr. Cooper with a closed fist caused him to suffer redness and bruising about the face, a concussion, to suffer substantial pain, to fear further physical injury and to become alarmed and annoyed?

A. Yes.

Q. And that was information that Thomas Jacobs told you, right?

A. Based on the complaint, yes.

Q. Now, I'd like to go to the second page of Exhibit 23.

A. Okay.

Q. And this is a supporting

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deposition; is that right?

A. Yes.

Q. What is a supporting deposition?

A. Supporting deposition is a document that we use in practice to convert a criminal court complaint into an information.

Q. And is it necessary to convert a criminal court complaint into an information because the charging instrument must be effectively signed or sworn to by somebody with personal knowledge?

A. Yes.

Q. And did Thomas Jacobs sign this supporting deposition under oath?

A. I don't know.

Q. Do you have any reason to believe he didn't?

A. I didn't draft this document.

Q. Okay.

Somebody at some point in the future would have drafted this document and effectively attached it to the complaint that you had drafted and signed?

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A. Yes.

Q. Now, going back to the first page of Exhibit 23, would it be correct to say that the offenses are listed roughly in order of severity?

MR. CARROLL: Objection to the form.

THE WITNESS: I mean, I don't know how it does -- as to how the program sorts it out when they're in the same level, but it usually starts with the higher ones, and then goes to the lower ones.

Q. Are you familiar with the phrase "top charge"?

A. Yes.

Q. What is the top charge?

A. Here, the top charges would be assault in the third degree and criminal mischief in the fourth degree.

Q. And what makes those the top charges?

A. They are both A misdemeanors.

Q. And would it be correct to say

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Hughes

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that the remaining charges are B
misdemeanors?

MR. CARROLL: Objection to the
form.

THE WITNESS: No.

Q. Is attempted assault in the third
degree an A misdemeanor or a B misdemeanor?

A. It's a B misdemeanor.

Q. What about menacing in the third
degree?

A. That is a B misdemeanor.

Q. What about harassment in the
second degree?

A. That's a violation.

Q. Would it be correct to say that a
violation contains no jail time --

A. No, no.

Q. You can go to jail for a
violation?

A. You can.

Q. What is the maximum sentence for
a violation?

A. I think it's 30 days.

MR. CARROLL: Objection. I mean,

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Hughes

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are we asking --

MR. RICKNER: I've got two more questions on this --

MR. CARROLL: I'm just asking -- I mean, this is something we can find out from a law book, we don't need to be asking --

MR. RICKNER: I come up with three, but I still need somebody to say it at trial, and my client can't do it.

MR. CARROLL: And can we just go off the record.

(Whereupon, an off-the-record discussion was held.)

Q. ADA Hughes, is it correct to say that the maximum sentence for a violation is 15 days in prison?

A. Yes.

Q. Is it correct to say that the maximum sentence for a B misdemeanor is three months in prison?

A. Yes.

Q. Is it correct to say that the maximum sentence for an A misdemeanor is

1 Hughes 50

2 one year in prison?

3 A. Yes.

4 Q. In order to be accused of the

5 charge assault in the third degree, is it

6 necessary for there to be an actual injury?

7 A. Well, I mean, we start --

8 MR. CARROLL: Objection to the

9 form.

10 THE WITNESS: I think you got to

11 start getting into the case law. You

12 definitely have it as hurt, but I think

13 the case law is you have to suffer

14 substantial pain, so --

15 Q. So, let me rephrase it.

16 Is it correct to say that in

17 order to be charged with assault in the

18 third degree, you have to cause substantial

19 pain?

20 A. Yes.

21 Q. So if somebody did not cause

22 substantial pain, they couldn't be charged

23 for that crime?

24 A. Correct.

25 MR. CARROLL: Off the record.

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Hughes 51

(Whereupon, an off-the-record discussion was held.)

MR. RICKNER: So moving on. On the record, please.

Q. Are you familiar --

MR. RICKNER: Withdrawn.

Q. ADA Hughes, are you familiar with the phrase "decline to prosecute"?

A. Yes.

Q. What does that mean?

A. "Decline to prosecute" means that we're not proceeding further on a case, usually at the ECAB stage.

Q. Is it fair to say that if at the ECAB stage there's a determination not to prosecute someone, then ultimately they won't have to go to court for those charges, and charges won't be brought against them, for that specific set of allegations?

MR. CARROLL: Objection to the form.

THE WITNESS: Can you just break your question up a little bit for me.

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I'm sorry.

MR. RICKNER: That's fine.

Q. Would it be correct to say that there are certain instances where after listening to the complaining witness, the district attorney decides not to bring charges?

A. Yes.

Q. And that means that a criminal complaint is never drafted, right?

A. It would be more correct to say it's not filed.

Q. So it would be correct to say that if a determination is made to decline to prosecute, a criminal complaint is not filed, right?

A. Yes.

Q. And, therefore, the criminal prosecution is not set in motion, right?

A. Right.

Q. At the ECAB stage, who makes the determination to decline to prosecute?

A. Ultimately, it would be a decision signed off on by a boss. If you

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as the screener have an inkling that it might be a DP, you can tell the boss and discuss it.

Q. Would it be correct to say, then, that the boss has the final -- makes the final determination.

A. The boss always makes the final say.

Q. What factors go into determining that a case should be declined to prosecute?

MR. CARROLL: Objection to the form.

THE WITNESS: It depends. Sometimes there's no crime. Sometimes it's an interest of justice sort of thing, sometimes there's an obviously bad search.

I mean, our office, for a while, was -- I mean, we were in the paper on marijuana cases, we were dismissing those in the interest of justice.

There's -- I mean, it's -- there could be like a whole host of reasons why to

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DP a case.

Q. If a complaining witness is proven to have credibility problems, they're not telling the complete truth, would that be a reason to decline to prosecute?

A. I -- it could be.

Q. If the defendant was a victim of a crime at the hands of the complaining witness, would that be a reason to decline to prosecute?

A. I don't understand your question.

Q. Let's say there's a case where --
MR. RICKNER: Withdrawn.

Q. Let's make it specific.
Here, the allegation is in the complaint that Mr. Cooper struck Mr. Jacobs; is that correct?

A. Yes.

Q. If it came to light that Mr. Jacobs had instigated the fight, and then badly injured Mr. Cooper, would that have gone into a decision as to whether or not to decline to prosecute?

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Hughes 55

MR. CARROLL: Objection to the form.

THE WITNESS: That depends, I think.

Q. Depends on what?

A. For one, it would depend on if I knew about that, but, two, my understanding is I -- I think this was -- it wasn't a cross-complaint, but there was another case based on the screening sheet that went along with this. So there were charges on somebody else.

Based on the screening sheet, someone named Daniel O'Connor was arrested for assaulting Mr. Cooper and the associated arrest number. But I don't recall if I ever wrote up that case. If it was a DAT, it might have just been in the bin.

Q. Right. And let me take a step back.

Obviously, you can't make a determination as to whether or not to decline to prosecute based on information

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you don't get, right?

A. Correct.

Q. What I'm asking is, if you had received information that Thomas Jacobs had initiated the fight against Mr. Cooper, and then proceeded to beat him up, would that go into your determination as to whether or not to decline to prosecute had you known that information?

MR. CARROLL: Objection to the form.

Q. You can answer.

A. I mean, if I knew it at the time?

Q. Yes.

A. If I knew that at the time, I mean, we're kind of talking hypotheticals right now, but if someone had communicated that to me, I would have put it into the narrative or the screening sheet and discussed it with the boss, because that can go into bail factors and, you know, other stuff evaluating the case.

I don't know if I would necessarily -- because you might need more

1 Hughes 57
2 investigation by the assigned, and the role
3 of an ADA in ECAB is to screen the case.
4 If there's something glaring, maybe we DP
5 it. But otherwise, we need to get it
6 assigned to an ADA to dive in and
7 investigate.
8 Q. If someone --
9 MR. RICKNER: Withdrawn.
10 Q. If during the interviews as part
11 of the DAT screening it is determined that
12 the defendant was also the victim of a
13 crime, would that be investigated by the
14 District Attorney's Office?
15 A. Yeah, and I mean, based on my
16 screening sheet, there was a case, I don't
17 know how that happened to that case.
18 Q. Understood.
19 But it's correct to say that
20 based on your screening sheet, it says
21 Daniel O'Connor was the assailant, right?
22 A. Yes.
23 Q. If you had known that police
24 Lieutenant Thomas -- Ms. Jacobs was also an
25 assailant, would that have been

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Hughes 58

investigated by the district attorney?

MR. CARROLL: Objection to the form.

THE WITNESS: Yeah.

Q. And by putting that information in the screening sheet, that flags the issue for the future district attorney who ultimately handles the case, right?

A. I mean, that's part of the reason they put it in the screening sheet.

MR. RICKNER: And let's go off the record for two minutes. I want to talk to Yitzchok for a second, and then maybe if I'm lucky, we can just wrap this up.

(Whereupon, an off-the-record discussion was held.)

Q. ADA Hughes, is there anything in the complaint room screening sheet that indicates that Mr. Cooper was the one who made the 9-1-1 call?

A. No.

Q. If you had received that information during your interviews, would

1 Hughes 59

2 you have included it in the complaint room
3 screening sheet?

4 A. Yes, that's likely.

5 MR. CARROLL: Off the record.

6 (Whereupon, an off-the-record
7 discussion was held.)

8 Q. ADA Hughes, is there anything in
9 Exhibit 27 that indicates that Mr. Cooper
10 called 9-1-1?

11 A. There is. I misspoke before. I
12 was thinking Thomas Jacobs in my head, but
13 there's a notation that Steve Cooper called
14 9-1-1 and stated he was robbed at gunpoint.

15 Q. Where did you receive that
16 information from?

17 A. I don't know.

18 Q. After the DAT is screened, the
19 information is provided to a different
20 district attorney who actually handles the
21 case; is that correct?

22 A. Yes. I would just note that our
23 practice has changed a little bit since I
24 was in ECAB, our office has gone largely
25 vertical. I don't know if it's the same

1 Hughes 60

2 for DATs now as it was in 2016?

3 Q. Okay.

4 Well, although I'm actually
5 interested to know that as a general
6 matter, specifically in April of 2016,
7 after the DAT screening process was
8 finished, a different district attorney
9 would ultimately take over to process the
10 case, right?

11 A. Yes.

12 Q. And that district attorney would
13 often rely on the information that was
14 obtained during the ECAB process, right?

15 A. That's fair to say. It depends
16 on the assigned ADA.

17 Q. There are instances when the
18 assigned ADA does not go back and
19 re-interview the complaining witness,
20 right?

21 MR. CARROLL: Objection to the
22 form.

23 THE WITNESS: I mean, I guess. I
24 don't -- I don't think I have ever done
25 that in my practice.

1 Hughes 61

2 Q. Would you -- in your practice, do
3 you re-interview the complaining witness
4 prior to the first court appearance
5 following arraignment?

6 A. That depends.

7 MR. CARROLL: Objection to the
8 form.

9 THE WITNESS: The goal is to
10 reach a witness as soon as you can. It
11 doesn't always necessarily happen
12 before the first court date.
13 Especially in a case like a DAT where
14 nobody is in custody.

15 It's certainly different for a
16 felony matter, where someone is
17 incarcerated.

18 Q. And there can be instances where
19 the complaining witness is not
20 re-interviewed by the district attorney
21 who's handling the prosecution, until
22 several court appearances have been made,
23 right?

24 A. I would sometimes, maybe it -- it
25 really depends on your ADA, but it would

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also depend on the responsiveness of your witness.

Q. If a police officer has a history of misconduct, would that be part of the consideration as to whether or not to decline to prosecute?

MR. CARROLL: Objection to the form.

THE WITNESS: Back in 2016, if you knew about it, it might be a factor in moving forward on the case. It would depend on what the allegations of misconduct were, whether they were substantiated, et cetera.

Since then, we've -- under the new discovery law, things have changed a little bit about how we have access to that information and process our cases.

Q. Is it fair to say you have more access to information than we did before the change in 50A?

A. I believe so, yeah.

Q. But going back, if the

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complaining witness had credibility issues,
would that go into the decision as to
whether or not to decline to prosecute?

MR. CARROLL: Objection to the
form.

THE WITNESS: It could go into
that if you know that there's a
credibility issue.

Q. So if you did know that was a
credibility issue, would that go into the
determination as to whether or not to
decline to prosecute?

MR. CARROLL: Objection to the
form.

A. If I know that a witness has a
credibility issue, then we -- I would have
to conference it with the supervisor and we
would discuss how to move the case forward
or not.

Q. And because of the credibility
issue, there is a chance that you decide
not to move the case forward and prosecute,
right?

A. It depends on the credibility

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issue we're talking about.

Q. But some credibility issues will rise to the point where you say I'm not going to prosecute this case because the witness is incredible?

A. That can happen, yeah.

MR. RICKNER: All right. Thank you very much for your time. I did think I did make my hour and a half promise deadline, unless somebody else has some questions they want to jump in on.

THE WITNESS: Thank you very much.

MR. DELUCA: I have no questions.

MR. MOSCHELLA: No questions.

MR. RICKNER: Fantastic, guys.

Do you want to hold on the line for just a second, and let the --

Off the record.

(Whereupon, an off-the-record discussion was held.)

MR. CARROLL: I want it on the record, but I'm addressing you, that

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you are going to send us a copy
pursuant to the Federal --

MR. RICKNER: You're preserving
your right to review and sign. Got it.
I will do so.

MR. CARROLL: Yes, I am. Okay.
Thank you.

Have a good day, everyone.

MR. RICKNER: Thank you.

(Time note: 4:30 p.m.)

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SEAN HUGHES

Subscribed and sworn to
before me this day
of 2020

CERTIFICATE

STATE OF NEW YORK)

) ss.

COUNTY OF KINGS)

I, Rose Marie Iacobellis, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That SEAN HUGHES, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

ROSE MARIE IACOBELLIS

November 4, 2020

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Exhibit 28	16	Document Bates Stamped D_00116
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Exhibit 29	23	Complaint room tracking sheet
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Exhibit 30	28	Witness contact information sheet Bate Stamp D_00126
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